

Tulasamma Vs. Srinivasan

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Court : Karnataka

Decided On : Mar-08-1995

Reported in : ILR1995KAR1328; 1995(2)KarLJ300

Judge : M.F. Saldanha, J.

Acts : [Karnataka Land Reforms Act, 1961](#) - Sections 133

Appeal No. : M.F.A. No. 282 of 1995

Appellant : Tulasamma

Respondent : Srinivasan

Advocate for Def. : A.C.C. Associates

Advocate for Pet/Ap. : H.P. Mudlappa, Adv.

Judgement :

Saldanha, J

1. Heard appellant's learned Advocate and respondent's learned Advocate.

2. The principal ground on which the order passed by the trial Court has been challenged by the appellant's learned Advocate is that according to him, the appellant had applied to the Land Reforms Tribunal for a declaration in his favour in respect of the entire area of two acres of land. The Tribunal upheld the

appellant's contention to the extent of one acre and 10 guntas and disallowed it in respect of 30 guntas. It is in respect of this 30 guntas that the present dispute has arisen. It is his submission that this is a matter within the scope of the Tribunal's jurisdiction and that consequently, the Civil Court having regard to the provisions of the Section 133 of the Land Reforms Act, has no jurisdiction to enquire into a dispute or pass any orders. He, therefore, submits, that in the first instance, the impugned order is without jurisdiction.

3. As far as this point of law is concerned, the position is seriously contested by the respondent's learned Advocate, who submits that this is a misconstruction of the provisions of Section 133. He places reliance on a recent Decision of this Court reported in ILR 1994 KARNATAKA 2505 Subbachari vs Joyappa. The learned Single Judge of this Court had occasion to consider a situation where an injunction had been prayed for in respect of certain disputed lands on the basis of the possessory rights that were claimed and the bar under Section 133 was pleaded. In a considered Judgment, the learned Single Judge took the view that the bar to jurisdiction under Section 133 is limited only to those cases where the dispute concerns the issue of tenancy or a declaration thereof and that consequently, the Civil Court was within its rights to entertain the suit in that case. Section 133, to my mind, is abundantly clear in so far as there can be no dispute about the fact that the Legislature did set up a Special Forum for adjudication of all matters in relation to lands that were the subject matter of issues within the special jurisdiction of the Tribunal and consequently, barred Civil Courts from exercising powers in respect thereof. In a case where the question of tenancy is not involved and no such declaration has been asked for and where the dispute projected before the Civil Court has nothing to do with the powers exercisable by the Tribunal under the Land Reforms Act, a Civil Court would be perfectly within its jurisdiction to exercise powers. Under these circumstances, the submission with regard to the lack of jurisdiction of the Civil Court to my mind, requires to be rejected.

4. The second ground on which the order in question is seriously assailed is that the dispute that was taken to the Tribunal has not been finally set at rest. Appellant's learned Advocate submits that his client who is aggrieved by the partial

rejection of her demand in respect of the area of 30 guntas, has thereafter filed W.P.No. 23999/92 which has been admitted and which is pending before the Division Bench of this Court. There is a serious controversy with regard to the question as to whether or not Interim Orders have been passed in that proceeding. The order sheet has been produced before me and one needs to go by the contents of the orders in question dated 27.10.1994, wherein the petitioner filed I.A.II for Interim Orders which came to be rejected. The short order passed on that date very clearly states that no Interim Orders were being passed. Apart from that aspect, what the appellant's learned Advocate basically submits is that his client has made out an arguable case, which is why the Petition has been admitted and in the event of his client's succeeding, the matter is bound to be remanded to the Tribunal. He further submits, that in the event of his client's ultimate success, that she will be left with no remedy if the respondents were to be permitted to build on the land in question in the meanwhile. According to the appellant's learned Advocate, there is no construction on the disputed land as of now and he submits that until the rights of his client are finally adjudicated, that the Court should not permit any alteration of the status-quo. It is his grievance that taking advantage of the interim order, the respondent who has already made preparations for carrying out construction is likely to do so and that consequently, the order passed by the Trial Court is liable to be either set aside or varied.

5. The respondent's learned Advocate has demonstrated to me that the Tribunal has finally adjudicated the rights of the parties and that even the Division Bench of this Court has refused interim reliefs in this case. He submits that his client who is in possession, under these circumstances, has every right to utilise the property and that unless and until there is a definite adjudication by any legal authority in favour of the appellant, that she must be restrained from interfering with the exercise of the respondent's rights. The subsidiary argument canvassed is that where the trial Court has correctly exercised jurisdiction, that this Court ought not to interfere with that order. The respondent's learned Advocate has relied on the Decision of this Court reported in 1989(2) KLJ 23 Panditrao vs Sharanappa, wherein, this Court has taken the view that the powers under the Specific Relief Act are wide enough to direct appropriate corrective action even if necessary by way of restoration of possession.

6. On a careful consideration of the material placed before me and the submissions canvassed by the two learned Advocates, I have no hesitation in holding that the position in law entitles the Civil Court to exercise jurisdiction in this particular suit. As far as the impugned order is concerned, it is true that the appellant has filed a Writ Petition and that it is pending before the Division Bench. I am conscious of the fact that the Petition has been admitted. The argument, however, that merely because the Petition has been admitted, entitles the appellant to contend that she will ultimately succeed or that if the matter is remanded to the Tribunal, that she will succeed there, is purely within the sphere of conjecture. If the Division Bench of this Court was of the view that Interim Orders were warranted in that Petition, the Division Bench would have passed such orders and it is clear from the rejection of I.A.II, that the Division Bench was not inclined to pass any Interim Orders. Under those circumstances, the matter is virtually wide open.

7. The order passed by the learned trial Judge which has been carefully considered by me, under which the learned trial Judge has protected the rights of the respondent-plaintiff who is in possession of the area of the disputed 30 guntas of land requires to be confirmed. As regards the contention raised by the appellant's learned Advocate that if the respondent-plaintiff were to alter the position of the land to the extent of putting up immovable construction thereon, that his client will be prejudiced; it proceeds on the footing that his client is certain of success both in the High Court and before the Tribunal. I am afraid, that this Court cannot take cognizance of any such hypothetical position in the light of the fact that the matter has once gone to the Tribunal which has adjudicated the rights of the parties. Under these circumstances, the only limited protection which the present appellant would be entitled to is that the respondent-plaintiff, if he so desires to alter the situation of the land by putting up any further structures thereon, shall file a written undertaking before the trial Court undertaking that under no circumstances, will any third party rights be created without the express permission of the trial Court, Furthermore, the respondent shall also file a written undertaking to the effect that in the event of any structures being put up and the present appellant succeeding ultimately, that those structures will be demolished at the respondent's cost and that the respondent undertakes to restore possession

to the appellant in the same condition in which the land originally was.

8. With these directions, the Appeal to stand disposed of.

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